

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

RALPH D. MOYER  
and  
CHARLOTTE A. P. MOYER

Claim No. CU-3595

Decision No. CU- 6295

Under the International Claims Settlement  
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$1,110,792.00, was presented by RALPH D. MOYER and CHARLOTTE A. P. MOYER based upon the asserted loss of certain property in Cuba. Claimants have been nationals of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimants assert the following losses:

El Gas Popular de Cuba, S.A. (Gas of Cuba), a Cuban corporation - stock interest	\$ 964,722.00
Debts owed by Gas of Cuba to claimants	36,953.00
Debts owed by Gas of Cuba to two American corporations	66,343.00
Personal property	<u>42,774.00</u>
Total	<u>\$1,110,792.00</u>

El Gas Popular de Cuba, S.A.

The record shows that Gas of Cuba was organized in Cuba in 1953. It was engaged in selling and distributing liquified petroleum (butane and propane) and appliances needed for their use. A balance sheet for Gas of Cuba as of June 30, 1960 discloses that its outstanding capital stock consisted of 10,000 shares of common stock and 2,530 shares of preferred stock, which had par values of \$1.00 and \$100.00 per share, respectively.

Based upon copies of stock certificates and considering the community property laws of Cuba, the Commission finds that claimants jointly acquired in 1953 all of the outstanding shares of common stock of Gas of Cuba.

(See Claim of Robert L. Cheaney et ux., Claim No. CU-0915.) It further appears that in 1953 one Hubert E. Howard, Sr., a national of the United States since birth, acquired all of the outstanding shares of preferred stock of Gas of Cuba. Subsequently, Hubert E. Howard, Sr. assigned to claimants his stock interest in Gas of Cuba and all debts owed him by Gas by Cuba. Therefore, claimants jointly owned a 100% stock interest in Gas of Cuba.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution No. 3 pursuant to Law 851, which listed as nationalized Gas Popular de Cuba, S.A. The Commission therefore finds that Gas of Cuba was nationalized by the Government of Cuba on October 24, 1960.

Since Gas of Cuba was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity

organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Claimants assert a loss of \$964,722.00 on account of their stock interest in Gas of Cuba. They state that they have evaluated the fixed assets of Gas of Cuba on the basis of 1953 costs adjusted to arrive at replacement value in December 1966 by means of Department of Labor wholesale price indexes and allowances for transportation, duty and entry. The other assets of Gas of Cuba were evaluated by claimants on the basis of their gross values compounded annually for seven years at 8% per year. However, claimants have failed to submit the details indicating how they arrived at their valuations.

In any event, the Commission is constrained to reject claimants' valuations. The Commission's function in this respect under Title V of the Act is to determine the values of the properties on October 24, 1960,

the date of loss. Therefore the asserted values at times subsequent to the date of loss would be irrelevant.

As noted above, the Commission consistently has construed the language of Section 503(a) relating to the evaluation of loss to be no different from the international legal standard normally prevailing, which the Commission has applied in claims under the Act. The Commission finds no basis for concluding that the statutory reference to "cost of replacement" means the cost of replacing the properties in question with new properties. Upon careful consideration of this matter, the Commission holds that the term "cost of replacement" means replacement in kind, taking into consideration the age and condition of the properties on the date of loss, and that all of the specific bases mentioned in Section 503(a) are merely standards for determining the value of property on the date of loss. (See Claim of M & M Dredging & Construction Co., et al., Claim No. CU-0219.)

Upon consideration of the entire record, the Commission finds that the valuation most appropriate in this case and equitable to the claimants is that shown in the balance sheet for Gas of Cuba as of June 30, 1960, apparently the last available financial statement, with certain adjustments discussed hereafter. That balance sheet indicates the financial condition of Gas of Cuba as of June 30, 1960 to have been as follows, the Cuban peso being on a par with the United States dollar:

Assets

Cash		\$ 34,233.90
Notes and accounts receivable		2,270.55
Other Accts. Receivable -- R. D. Moyer and Associates, S.A. (Net)		1,944.02
Gas Popular Nicaragua, S.A. (Gas of Nicaragua)	\$ 2,053.85	
Gas Popular Honduras, S.A. (Gas of Honduras)	<u>2,939.67</u>	4,993.52
Inventories		34,229.37
Fixed Assets (Net After Depreciation)		194,102.71

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Deferred Charges		\$ 5,733.88
Organization expenses	\$ 85,062.15	
Less Amortization	<u>46,784.10</u>	38,278.05
Deposits and other Assets		<u>3,490.28</u>
Total Assets		<u>\$319,276.28</u>
<u>Liabilities and Capital</u>		
Liabilities:		
Notes and accounts payable		\$ 28,044.34
Customers' advance payments		1.30
Customers' deposits		2,851.00
Long term payables - foreign countries		17,026.60
Interest on payables		34,732.80
H. E. Howard, Sr.		5,898.58
R. D. Moyer		1,559.84
Gas of Nicaragua		14,000.00
Accumulated dividends		
Payable on Preferred Stock		<u>35,516.67</u>
Total Liabilities		\$139,631.13
Capital:		
Preferred stock - 2,530 shares	\$253,000.00	
Common stock- 10,000 shares	<u>10,000.00</u>	\$263,000.00
Surplus:		
Deficit to August 31, 1959	\$ 47,383.85	
Loss - September 1, 1959 to June 30, 1960	<u>35,971.00</u>	<u>( 83,354.85)</u>
Total Liabilities and Capital		<u>\$319,276.28</u>

In response to Commission inquiries, Mr. Moyer stated in his letter of March 13, 1970 that R. D. Moyer and Associates, S.A. was a Panamanian corporation, and that Gas of Nicaragua and Gas of Honduras were corporations organized under the laws of Panama and Honduras, respectively. The Commission finds that the debts owed to Gas of Cuba by these three foreign corporations in the amounts of \$1,944.02, \$2,053.85 and \$2,939.67, respectively, were beyond the jurisdiction of the Government of Cuba and therefore could not have been taken by Cuba. Accordingly, these receivables in the

aggregate amount of \$6,937.54 will not be considered in arriving at the loss.

As already noted, Gas of Cuba had been organized in 1953. Its balance sheet as of June 30, 1960 includes organization expenses in the net amount of \$38,278.05 after amortization of \$46,784.10. Upon consideration of the entire record, the Commission finds that the organization expenses constituted assets of Gas of Cuba because they enhanced the enterprise's operations.

With respect to the amount of Gas of Cuba's liabilities, only one adjustment appears necessary on the basis of the evidence of record. Pursuant to a resolution of August 26, 1959 passed by the Board of Directors of Gas of Cuba, Mr. Moyer was designated as General Manager and his salary was to be \$1,000.00 per month. The evidence establishes that Mr. Moyer drew only \$500.00 each month from August 26, 1959 to the date of loss, and that the debt owed for the balance of his salary was not recorded on the books of Gas of Cuba. The Commission therefore finds that Gas of Cuba owed Mr. Moyer accrued salary in the amount of \$7,000.00.

Giving effect to the foregoing, the Commission finds that the aggregate of Gas of Cuba's assets and liabilities were \$312,338.74 and \$146,631.13, respectively. Therefore, the net worth of Gas of Cuba on October 24, 1960, the date of loss, was \$165,707.61 and claimants sustained losses in the amounts of \$82,853.81 (Ralph D. Moyer) and \$82,853.80 (Charlotte A. P. Moyer).

Debts Owed to Claimants

As noted above and considering the community property laws of Cuba,

claimants jointly succeeded to all claims of Hubert E. Howard, Sr. against Gas of Cuba. The balance sheet shows that these totalled \$41,415.25.

It further appears from the balance sheet that Gas of Cuba owed claimants a debt of \$1,559.84 and salary in the amount of \$7,000.00.

The balance sheet also shows a debt due from Gas of Cuba to Gas of Nicaragua in the amount of \$14,000.00. The evidence establishes that this debt was paid by claimants by offsetting it against amounts Gas of Nicaragua owed to claimants. The record shows that the promissory note drawn in favor of Gas of Nicaragua was cancelled, and in its stead a promissory note was drawn by Gas of Cuba in favor of claimants in the amount of \$14,000.00.

Inasmuch as this transaction took place on July 15, 1960, it does not appear in the balance sheet for Gas of Cuba as of June 30, 1960.

Accordingly, the Commission finds that Gas of Cuba was indebted to claimants in the aggregate amount of \$63,975.09.

The Commission has held that debts of a nationalized enterprise constitute a loss within the meaning of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].) The Commission therefore finds that RALPH D. MOYER and CHARLOTTE A. P. MOYER sustained losses in the amounts of \$31,987.54 and \$31,987.55, respectively.

#### Other Debts

Claimants have included in their claim certain losses aggregating \$66,343.00 asserted to have been sustained by two American corporations on account of debts due from Gas of Cuba. The record does not establish that claimants owned any interest in any claim for these asserted losses. Moreover, one of the entities, General American Transportation Corporation, has filed a claim in its own behalf (Claim No. CU-3477). Debts of enterprises qualifying as United States enterprises are not certifiable unless they are charges on property taken by the Government of Cuba. This has not been established, either. Accordingly, this portion of the claim is denied.

Personal Property

Based upon the evidence of record, the Commission finds that claimants jointly owned certain furniture, furnishings and other items of personal property maintained at their residence at 15209 First Avenue, Marianao, Havana, Cuba.

Law 989, published in the Official Gazette on December 6, 1961, by its terms effectively confiscated goods and chattels, rights, real property, bonds and other securities of persons who left Cuba. In the absence of evidence to the contrary, the Commission finds that the said personal property was taken by the Government of Cuba on December 6, 1961. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

Claimants assert a loss of \$42,774.00 on account of their personal property. In support thereof, they have submitted a list of their personal properties certified by neighbors who lived in the same building as claimants in Cuba. That list shows an aggregate amount of \$23,502.03, and it appears that the valuations were obtained from receipts and bills indicating the purchase prices. Claimants state that their aggregate valuation of \$42,774.00 was computed by compounding the purchase prices at 8% per annum for seven years to arrive at replacement costs. It is noted that the record includes a letter of July 11, 1960 from RALPH D. MOYER to the American Embassy, Havana, Cuba, in which he states that the value of the personal property at his residence in Marianao, Havana, Cuba, was \$8,500.00.

Upon consideration of this entire matter, the Commission finds no valid basis for accepting claimants' valuations. An examination of the list discloses that it includes furniture, appliances and furnishings, and clothing, which are subject to depreciation at the rates of 5%, 10% and 20% per year, respectively. Claimants state that the furniture and furnishings were acquired in 1958, and that most of the clothing was acquired in 1959 and 1960.

The Commission finds that the valuations most appropriate to the properties and equitable to the claimants are the results obtained by



applying a depreciation factor of 25% to the costs of the properties. Accordingly, the Commission finds that the aggregate value of the items of personal property on December 6, 1961, the date of loss, was \$17,626.52.

Section 506 of the Act provides:

In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses.

The record shows that claimants recovered \$1,250.00 from an insurance company on account of their personal property losses at their residence in Marianao, Havana, Cuba. Accordingly, the Commission finds that claimants' net losses amounted to \$16,376.52, and each claimant's interest had a value of \$8,188.26.

Recapitulation

Claimants' losses are summarized as follows:

<u>Item of property</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>RALPH D. MOYER</u>		
Gas of Cuba	October 24, 1960	\$ 82,853.81
Debts owed by Gas of Cuba	October 24, 1960	31,987.54
Personal property	December 6, 1961	<u>8,188.26</u>
Total		<u>\$123,029.61</u>
<u>CHARLOTTE A. P. MOYER</u>		
Gas of Cuba	October 24, 1960	\$ 82,853.80
Debts owed by Gas of Cuba	October 24, 1960	31,987.55
Personal property	December 6, 1961	<u>8,188.26</u>
Total		<u>\$123,029.61</u>

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered, as follows:

<u>FROM</u>	<u>ON</u>
<u>RALPH D. MOYER</u>	
October 24, 1960	\$114,841.35
December 6, 1961	<u>8,188.26</u>
Total	<u>\$123,029.61</u>

<u>CHARLOTTE A. P. MOYER</u>	
October 24, 1960	\$114,841.35
December 6, 1961	<u>8,188.26</u>
Total	<u>\$123,029.61</u>

CERTIFICATIONS OF LOSS

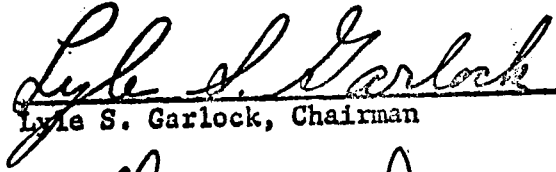
The Commission certifies that RALPH D. MOYER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Twenty-Three Thousand Twenty-Nine Dollars and Sixty-One Cents (\$123,029.61) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

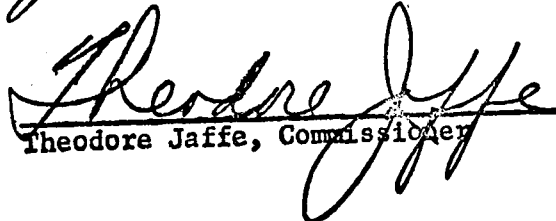
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The Commission certifies that CHARLOTTE A. P. MOYER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Twenty-three Thousand Twenty-nine Dollars and Sixty-one Cents (\$123,029.61) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

**AUG 4 1971**

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended (1970).)

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